

District Operations Brief

DO Brief #6 - 2012



Executive Sessions

Conservation Districts as political subdivisions of the State of Washington are required to follow the rules for holding Executive Sessions that are outlined in the Open Public Meetings Act (OPMA).

Purpose:

An executive session may be held during a board meeting only for one of the purposes identified in RCW 42.30.110(1) that is appropriate for districts, as follows:

- To consider matters affecting **national security**;
- To consider the **selection of a site** or the **acquisition of real estate** by lease or purchase when public knowledge regarding such consideration would cause a likelihood of increased price;
- To consider the minimum price at which **real estate** will be offered for sale or lease when public knowledge regarding such consideration would cause a likelihood of decreased price. However, final action selling or leasing public property shall be taken in a meeting open to the public;
- To review negotiations on the performance of **publicly bid contracts** when public knowledge regarding such consideration would cause a likelihood of increased costs;
- To receive and evaluate **complaints or charges** brought against a public officer or employee. However, upon the request of such officer or employee, a public hearing or a meeting open to the public shall be conducted upon such complaint or charge;
- To evaluate the **qualifications of an applicant** for public employment or to review the **performance of a public employee**. However, subject to RCW 42.30.140(4), discussion by a governing body of salaries, wages, and other conditions of employment to be generally applied within the agency shall occur in a meeting open to the public, and when a governing body elects to take final action hiring, setting the salary of an individual employee or class of employees, or **discharging or disciplining** an employee, that action shall be taken in a meeting open to the public;

- To evaluate the **qualifications of a candidate** for appointment to fill the remaining term of an elected supervisor's position, or to discuss a recommendation to the Conservation Commission to fill an appointed supervisor's position. However, any interview of such candidate and final action appointing a candidate to elective office shall be in a meeting open to the public;
- To discuss with legal counsel representing the district matters relating to **enforcement actions**, or to discuss with legal counsel representing the district **litigation or potential litigation** to which the district, the board, or an employee or associate acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in adverse legal or financial consequences to the district

Legislation that was enacted by the 2001 legislature clarifies that district boards may not hold an executive session solely because the attorney representing the district is present. If potential litigation is the reason for meeting in executive session, it is defined to mean matters protected by attorney-client privilege concerning a) litigation that has been specifically threatened to which the district is, or is likely to become, a party, b) litigation that the district "reasonably believes" may be commenced by or against the district, or c) litigation or legal risks of a proposed action or current practice when public discussion could result in adverse or financial consequences

A more detailed description of executive sessions is available at:
www.mrsc.org/askmrsc/pastingsubject.aspx?sid=22

Checklist: Procedures for Holding an Executive Session

An executive session should begin after a regular or special district board meeting is convened and adjourn before the meeting ends. While an executive session will therefore always be a part of a regular or special meeting, it is possible to hold a special meeting for the sole purpose of holding an executive session.

Any board action that results from an executive session discussion should occur during open meeting following the end of the executive session.

To start, the board chair announces the executive session and must state two things:

- (1) The purpose of the executive session, and
- (2) The time when the executive session will end.

The announcement is to be given to those in attendance at the meeting.

Announced Purpose:

The announced purpose of the executive session must be one of the statutorily-identified purposes for which an executive session may be held. The announcement therefore must contain enough detail to identify the purpose as falling within the limits of the law.

It would not be sufficient, for example, for a board chair to declare simply that the board will now meet in executive session to discuss "personnel matters."

Discussion of personnel matters, in general, is not an authorized purpose for holding an executive session; only certain specific issues relating to personnel may be addressed in executive session.

Length of Session:

Another issue that may arise concerning these procedural requirements for holding an executive session involves the estimated length of the session. If the board concludes the executive session *before* the time that was stated it would conclude, it should not reconvene in open session until the time stated. Otherwise, the public may, in effect, be excluded from that part of the open meeting that occurs between the close of the executive session and the time when the board chair announced the executive session would conclude.

If the executive session is not over at the stated time, it may be extended only if the board chair announces to the public at the meeting place that it will be extended to a stated time.

Attendance:

Attendance at an executive session need not be limited to the members of the board. Persons other than board members may attend the executive session at the invitation of the board. Those invited should have some relationship to the matter being addressed in the closed session, or they should be in attendance to otherwise provide assistance to the board. Note that if the stated purpose for the executive session is to discuss litigation or potential litigation with the district's attorney, the presence of persons at the session who are not board members or district staff may waive the attorney-client privilege.

Minutes:

Minutes are not required to be taken at an executive session. If minutes or notes are taken during an executive session, they may be subject to the disclosure requirements of the Public Records Act.

Collective Bargaining Sessions:

Collective bargaining sessions with employee organizations are not subject to the requirements of the OPMA. This means that while discussions of these topics may occur during an executive session, it is not necessary for the council to follow the OPMA procedures before such discussions. This exemption from the OPMA applies to contract negotiations, grievance meetings and discussions relating to the interpretation or application of a labor agreement or to that portion of a meeting during which the governing body is planning or adopting the strategy to be taken by the governing body during the course of any collective bargaining, grievance or mediation proceedings, or reviewing the proposals made in the negotiations or proceedings while in progress. RCW 42.30.140.